

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:)	Chapter 11
)	
CIRCUIT CITY STORES, INC., et al.,)	Case No. 08-35653-KRH
)	
Debtors.)	Jointly Administered
)	

**RESPONSE OF DARTMOUTH MARKETPLACE ASSOCIATES
TO LIQUIDATING TRUST'S FOURTEENTH OMNIBUS OBJECTION TO
LANDLORD CLAIMS (REDUCTION OF CERTAIN PARTIALLY INVALID
CLAIMS, RECLASSIFICATION OF CERTAIN MISCLASSIFIED CLAIMS,
DISALLOWANCE OF CERTAIN INVALID CLAIMS, DISALLOWANCE OF
CERTAIN LATE FILED CLAIMS, DISALLOWANCE OF CERTAIN DUPLICATE
CLAIMS, AND DISALLOWANCE OF CERTAIN AMENDED CLAIMS)**

Dartmouth Marketplace Associates ("Dartmouth"), by counsel, hereby responds to the Liquidating Trust's Fourteenth Omnibus Objection to Landlord Claims (Reduction of Certain Partially Invalid Claims, Reclassification of Certain Misclassified Claims, Disallowance of Certain Invalid Claims, Disallowance of Certain Late Filed Claims, Disallowance of Certain Duplicate Claims, and Disallowance of Certain Amended Claims)(the "Objection), as follows:

BACKGROUND

1. On September 10, 1992, the above-captioned debtor ("Debtor") entered into a Lease with Dartmouth (the "Lease"), whereby Dartmouth agreed to lease the commercial premises located at 456 State Road North, Dartmouth, Massachusetts to the Debtor.

Roy M. Terry, Jr. VSB No. 17764
John C. Smith, VSB No. 44556
Elizabeth L. Gunn, VSB No. 71044
Brittany J. Berlauk, VSB No. 80131
DuretteCrump PLC
1111 East Main Street, 16th Floor
Richmond, Virginia 23219
Telephone: (804) 775-6900
Facsimile: (804) 775-6911
*Local Counsel for
Dartmouth Marketplace Associates*

Lawrence M. Gold, Esquire
Gregory Schlich, Esquire
CARLTON FIELDS, P.A.
1201 West Peachtree Street, Suite 3000
Atlanta, Georgia 30309
Telephone: (404) 815-3396
Facsimile: (404) 815-3415
*Primary Counsel for
Dartmouth Marketplace Associates*
18619757.1

2. Effective as of March 11, 2009, the Lease was rejected as noted in the Notice of Rejection of Unexpired Leases and Abandonment of Personal Property, which set April 30, 2009 as the bar date for filing a proof of claim related to the Lease.

3. On April 28, 2009, Dartmouth filed a proof of claim for a general unsecured claim in the amount of \$579,655.84, designated as “Claim Number 12683,” for amounts due pursuant to the Lease, which was later amended to be a claim in the amount of \$636,909.21, designated as “Claim Number 14868.”

4. On or about February 27, 2011, the Liquidation Trust (the “Trust”) filed the Objection, which objected to Claim Number 14868 and reduced such claim from \$636,909.21 to \$496,252.67. The Objection also objected to Claim Number 12683 on the grounds that it was duplicative, and Dartmouth agrees that such claim was duplicative.

RESPONSE TO THE OBJECTION

5. The Liquidating Trust objects to Claim Number 14868 on the grounds that it does not match the Debtor’s books and records and states that the claim should be reduced by \$58,209.78 of overstated November rent and \$25,193.39 of rejection damages. *See* Objection Ex. C.

6. A proof of claim “constitutes *prima facie* evidence of the validity and amount of the claim.” FED. R. BANKR. P. 3001(f); *see In re Fitzgerald*, 2008 Bankr. LEXIS 3579, *4 (Bankr. W.D. Va. 2008) (“a proof of claim is presumed to be *prima facie* valid). The burden of proof therefore “shifts to the objector to come forth with evidence sufficient to rebut the *prima facie* case.” *See United States v. Johnson (In re Johnson)*, 2000 U.S. Dist. LEXIS 5649 *17 (N.D. Ga. March 30, 2000) (citing *Placid Oil*, 988 F.2d 554 at 557); *In re Brown*, 82 F.3d 801,

805 (8th Cir. 1996); *In re Allegheny International, Inc.*, 954 F.2d 167, 173 (3rd Cir. 1992); *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 COLLIER ON BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)); *In re Arndt*, 201 B.R. 853, 857 (M.D. Fla. 1996)); *Caroll v. United States (In re Carroll)*, 1993 U.S. Dist. LEXIS 17512, *3 (N.D. Ga. Nov. 9, 1993); *In re Rasbury*, 141 B.R. 752, 757 (N.D. Ala. 1992).

7. “If the proof of claim is supported by the required documentation, the presumption of validity may be overcome by the objecting party only if it offers evidence of equally probative value in rebuttal.” *In re Falwell*, 434 B.R. 779, 784 (Bankr. W.D. Va. 2009)(citing *In re Holm*, 931 F.2d at 623; *In re Fullmer*, 962 F.2d 1463, 1466 (10th Cir. 1992); *In re Allegheny International, Inc.*, 954 F.2d at 173–74). In order to prevail, the Liquidating Trust must present evidence “sufficient to demonstrate the existence of a true dispute and must have probative force equal to the contents of the claim.” *Id.* (citing 9 Collier on Bankruptcy, “Proof of Claim,” ¶ 3001.09[2] (15th ed. rev.)).

8. The Liquidating Trust has presented no evidence sufficient to reduce the amount of Claim Number 14868 from \$636,909.21 to \$496,252.67. Further, the total amount by which the Liquidating Trust wishes to reduce the claim, \$140,656.54, is not supported by the Liquidating Trust’s assertions that the claim should be reduced by “\$58,209.78 of overstated November rent and \$25,193.39 of rejection damages.” Additionally, Dartmouth does not agree with the Liquidating Trust’s assertion that the “November rent” or “rejection damages” were overstated.

9. Accordingly, the Objection with respect to Claim Number 14868 should be overruled, no part of the Objection or the relief sought therein should affect Claim Number

14868, and Claim Number 14868 should not be reduced and should remain in the amount of \$636,909.21.

10. The part with authority to reconcile, settle or otherwise resolve the Objection on the claimant's behalf is Lawrence Gold, Esq., Telephone: (404) 815-3396.

WHEREFORE, Dartmouth seeks and Order of this Court sustaining the Objection with respect to Claim Number 12683 as duplicative, denying the Objection with respect to Claim Number 14868, allowing Claim Number 14868 in the amount of \$636,909.21, and granting the Landlord such other and further relief as the Court deems just and proper.

Dated: April 7, 2011

By: /s/ John C. Smith
Roy M. Terry, Jr. VSB No. 17764
John C. Smith, VSB No. 44556
Elizabeth L. Gunn, VSB No. 71044
Brittany J. Berlaug, VSB No. 80131
DuretteCrump PLC
1111 East Main Street, 16th Floor
Richmond, Virginia 23219
Telephone: (804) 775-6900
Facsimile: (804) 775-6911
Local Counsel for
Dartmouth Marketplace Associates

- AND-

Lawrence M. Gold, Esquire
Gregory Schlich, Esquire
CARLTON FIELDS, P.A.
1201 West Peachtree Street, Suite 3000
Atlanta, Georgia 30309
Telephone: (404) 815-3396
Facsimile: (404) 815-3415
Primary Counsel for
Dartmouth Marketplace Associates

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response has been furnished using the ECF system on all registered users of the CM/ECF system who have filed notices of appearance in this matter.

By: /s/ John C. Smith

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